S/023/041
E/023/033

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April 12, 2001

HAND DELIVERED
D. Wayne Hedberg, Permit Supervisor
Minerals Regulatory Program
UTAH DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING
1594 West North Temple, Suite 1210
Salt Lake City, Utah

Re: S/023/041 & E/023/033

Dear Mr. Hedberg,

I represent Mr. Spenst Hansen, in his individual capacity, and the corporate interests of Keystone Surveys, Inc. (Keystone Surveys), and Mammoth Mining Company (Mammoth Mining). Mr. Hansen serves as the President of those companies. My clients have asked me to review and reply to your March 5, 2001, certified letter and earlier correspondence related to the permits referred to above. For your information, Mr. Hansen informs me that he received the certified letter on March 14, 2001.

In your letter you summarized your understanding of numerous discussions and correspondence between Mr. Hansen and staff members of the Utah Division of Oil, Gas and Mining (the "Division") between July 17, 2000, and November 15, 2000. You then presented three groups of concerns related to the above-referenced permits. It is our understanding that Concern #1 pertains solely to lands owned by Mammoth Mining and subject only to Small Mining Operations Permit, S023/00/041. It also is our understanding that Concern #2 and Concern #3 pertain solely to lands owned by Keystone Surveys and subject only to Exploration Project Permit, E023/00/033.

Below, I will briefly explain the difficulties my clients have faced finalizing their reclamation plans. Then I will explain their reasons for separating their proposals into two plans, one for each Permit. (Following this letter are two Attachments that discuss those proposals in greater detail.) Finally, I will present my clients' concern with the Division's requirement of a $25,000 transitional reclamation surety.

1. Grand Central Silver Mines, Inc. (Grand Central), transferred the reclamation responsibility under the two permits to my clients on approximately April 27, 2000, with the Division's approval. That transfer occurred nearly two years after the date Grand Central transferred the land to my clients, July 17, 1998. Regrettably, on neither occasion did Grand Central deliver or make available to my clients their permit files, or any copies of the original permits, the Annual Reports, and other relevant materials, despite considerable and repeated requests by my clients. This

significant lack of background and historical information has handicapped my clients considerably in completing the obligations assumed under the transfers described above.

2. At present, my clients are not certain which reclamation tasks fall under which permit. However, it is clear that the permits are of two different types and are independent of each other. Also, Mammoth Mining and Keystone Surveys are not subsidiaries or affiliated companies, or otherwise related. Further, as noted above, we understand that the Small Mining Operations Permit applies only to lands owned by Mammoth Mining, and the Exploration Project Permit applies only to lands owned by Keystone Surveys. Thus, we firmly believe that these permits should be handled separately. I have separated my discussion of each permit accordingly, and they are contained in the two attachments to this letter.

3. Concerning the surety issue, we do not believe that the Utah Mined Land Reclamation Act, or corresponding regulations permit the Division to require Mammoth Mining or Keystone Surveys to post a transitional reclamation surety under the present circumstances. To begin with, U.C.A. §40-8-14(1) clearly states that a mining operator is required to post security only *"[a]fter receiving notification that a notice of intention for mining operations other than small mining operations has been approved, but prior to commencement of those operations."* See also, Rule R647-4-113.1 *("After receiving notification that the notice of intention has been approved, but prior to commencement of operations, the operator shall provide the reclamation surety to the Division").*The only relevant notices of intention approved to date are the two referenced permits. Further, the Act and regulations require that an operator only *"file a notice of intention ... [b]efore [he] begins mining operations,"* U.C.A. §40-8-13(1)(a); Rule R467-4-101. Mammoth Mining and Keystone Surveys have no intention of beginning any mining operations. They have not sought approval of, or filed a notice of intention to begin mining operations. Thus, as provided in the Act and regulations, no surety is required.

Additionally, in earlier correspondence you stated your understanding "that some of the mining and/or exploration related work was not properly permitted with the Division before the activity took place" (letter to Hansen, dated September 21, 2000, page 2), and that it was carried out by Mammoth Mining's predecessors without posting surety. Even if true, under the Act the failure to provide surety to the Division became a violation on the date immediately *"prior to commencement of... operations,"* see U.C.A. §40-8-14(1), and Rule R647-4-113.1. Thus, if non-permitted work was carried out, as alleged, it most likely commenced between 1994-96, and certainly must have commenced prior to July 17, 1998, the date Grand Central transferred the property to my clients. Therefore, the last possible date of an alleged violation for failure to provide surety must have occurred more than two years ago. However, the Act and regulations do not permit the Division or the Board to commence or maintain any suit, action, or other proceeding based upon

a violation of the Act, unless commenced within two years from the date of the alleged violation, see U.C.A. §40-8-9(2); cf. Rule R647-5-101.3 *("Adjudicative proceedings ... include the following: R647-2-111, Surety, Form and Amount; and R647-4-113, Surety, Form and Amount")*. As such, the Division is statutorily barred from initiating any proceedings for the alleged surety violation. We believe that also means the Division is barred from requiring performance of the surety obligation underlying that alleged violation.

I appreciate your excellent cooperation with my clients in the mutual effort to ensure that all required reclamation is completed. My clients are anxious to schedule the field inspection with the Division and look forward to amicably concluding this matter. I trust you will give prompt and thoughtful consideration to their concerns and proposals, expressed in this letter and its attachments. Please call me at (801) 596-2267 regarding any questions or comments you or other Division staff may have. Thank you.

Sincerely,

TRUJILLO & ASSOCIATES

Carlos M. Chavez, of counsel

/tw
attachments (2)
cc: Mr. Lowell Braxton, Director
Utah Department of Natural Resources
Division of Oil, Gas & Mining
Board of Directors --
Mammoth Mining Company
Keystone Surveys, Inc.
Mr. Spenst Hansen

ATTACHMENT "A"

REPLY OF KEYSTONE SURVEYS, INC.
(to Letter dated March 5, 2001, from D. Wayne Hedberg)

(Pertaining to Exploration Project Permit, E/023/00/033)

RE: CONCERN # 2
(14 Numbered Areas Listed. Owned by Keystone Surveys, Inc.)

It is our understanding that all of the items listed under Concern #2 are part of the Exploration Project Permit, E23/00/033. Keystone Surveys agrees with the Division that a field inspection will be required to verify which of these areas are excluded from additional reclamation regarding disturbances on lands where mining operations ceased prior to the effective date of the Act, July 1, 1977.

My client requests that a senior member of its staff accompany the Division representative on the field inspection. Please advise me and Keystone Surveys by fax or personal phone communication (not voice mail) at least five (5) business days prior to the proposed field inspection date. My fax no. is (801) 596-2270, and my telephone no. is (801) 596-2267. My client's fax no. is (801) 355-6041, and its phone no. is (801) 355-6044.

RE: CONCERN # 3
(6 Numbered Areas Listed. Owned by Keystone Surveys, Inc.)

It is our understanding that all of the items listed under Concern #3 are part of the Exploration Project Permit, E23/00/033. Keystone Surveys agrees to comply with your stated requests. My client is in the process of preparing closure design plans for each of the listed areas.

Keystone Surveys is anxious to proceed with the necessary closures and reclamation. It agrees to submit the plans as soon as possible to the Division, as requested by your letter. Please have your staff review the design plans expeditiously. My client will wait for the Division's decision on approval prior to commencing any construction or other reclamation work. You may contact me and my client as indicated above.

ATTACHMENT "B"

REPLY OF MAMMOTH MINING COMPANY
(to Letter dated March 5, 2001, from D. Wayne Hedberg)

Pertaining to Small Mining Operations Permit, S/023/00/041

RE: CONCERN # 1
(7 Numbered Areas Listed. Owned primarily by Mammoth Mining Company)

I. PREFACE

We disagree with the acreage measurements, as identified by area in Section III, below. Also, we are confused by the Division's interpretation of certain provisions and policies of the Act and Rules. Our understanding of those provisions indicates that some of the land listed in Concern #1 is exempt from reclamation and that the present condition and probable future use of other areas already meet the law's reclamation requirements. That further reduces the acreage measurements. We anticipate that the field inspection will greatly assist in resolving these issues.

This is our understanding of the Act and Rules. The Legislature declared in the Act that mining is essential and surface alterations are necessary. The Act's purpose was (i) to regulate mining, and (ii) to control its effects on the mined land's surface. To regulate mining activities, the Legislature gave the Division authority to issue permits and variances regarding mining activities and reclamation plans. To regulate the effects, the Legislature gave the Division authority to assess the land's post-mining condition and its probable future use. The Division is to rationally determine whether the land already is in a reclaimed condition for such probable future use, or whether it needs (additional) reclamation.

The Legislature excluded land where mining ceased prior to 7/1/77. This excluded much of the land in the Tintic Mining district because most of the significant adverse surface effects found there resulted from mining operations that ceased prior to 1931. See attached copy of the Tintic Mining District topographical map, published by the USGS in 1913. The Legislature also excluded land that has been reclaimed under an approved plan or reclaimed in some other way.

For all other areas, the Legislature gave the Division authority to regulate any mining activity that continued or began after 7/1/77. There are many types of mining activities. They cause a variety of effects on the surface of the land. When mining is over, its effects leave the surface in a wide range of conditions. That is why the Legislature also gave the Division authority to assess the land's post mining surface condition.

The Legislature also recognized that the post-mining condition of some land might not need reclamation if it already was compatible with the post-mining land use. There is a wide variety of post-mining land uses. Some land and its uses are public, while the rest are privately owned and determined. Thus, the Legislature insisted that reclamation be adapted to a wide diversity of factors, including economic and social factors, locale and user type.

II. INTERPRETATION OF THE ACT AND RULES

In its March 5, 2001 letter, the Division implied that Mammoth Mining Company's position is that no reclamation is required, i.e., that it is not reclaiming certain features or intends to leave them unreclaimed. That is not accurate. Mammoth Mining Company believes that reclamation of the areas listed under Concern #1 fits into three categories:

(i) Much of the property is excluded from the Act because all mining operations ceased prior to 7/1/77, or because no post-7/1/77 mining activity caused significant disturbance to surface resources that already had been significantly disturbed prior to 7/1/77. The State has reclamation responsibility over these lands under the Abandoned Mine Reclamation Program.

(ii) Other areas are excluded from the Act because they already have been reclaimed in accordance with the exclusion requirements, or if not excluded, their present condition already meets the reclamation requirements for approval and no variances are required. The Division may suggest additional reclamation, but may not require it.

(iii) There may be a few areas of land that may require reclamation, as determined by the field inspection. If reclaimed in accordance with the Act, no variances are required.

These three categories are derived from specific terms and provisions in the Act and the Rules, as explained in the points below. The apparent difference in interpretation by the Division, also stated below, is the source of my client's confusion regarding the perceived sufficiency of its reclamation and plans.

1. <u>The Act excludes lands on which mining operations ceased prior to 7/1/77. That also excludes lands on which mining activities after 7/1/77 did not use mechanized equipment, or did not cause any significant surface resource disturbance to lands already significantly disturbed as of 7/1/77</u>.

The Act does not regulate every disturbance. U.C.A. §40-8-4(8)(b) indicates that the Act's coverage of mining operations *"does not include: ... activities which will not cause <u>significant</u> surface resource disturbance"* (emphasis added). Nor does the Act regulate every mining activity: U.C.A.§40-8-4(8)(a) states that *"'Mining operation' means those <u>activities conducted on the surface</u> of the land ... including ... the <u>surface effects</u> of underground and in-situ mining "* (emphasis added). Nor does the Act require total restoration. Its stated purpose is *"to <u>minimize</u> undesirable effects,"* U.C.A. §40-8-2(2), and *"to <u>minimize or prevent</u> ... environmental degradation,"* U.C.A. §40-8-12(2) (emphasis added). Thus, the Legislature did not intend the Act to apply to insignificant disturbances, or minimal adverse effects and conditions, or subsurface effects of mined lands.

The corollary of those legislative policies is that reclamation is NOT required so long as the <u>adverse</u> surface effects of mining activities have been minimized, are no longer significant, or are no longer adverse. We believe that corollary applies to many of the areas pertaining to Concern #1.

2. The Act also excludes lands that have been reclaimed sufficiently to give the Board discretion to approve it, without requiring that approval.

The Act states: *"All lands shall be excluded that would otherwise be includable as land affected but which have been reclaimed in accordance with an approved plan or otherwise, as may be approved by the board,"* U.C.A. §40-8-4(7) (emphasis added). As written, the underlined language merely permits the Board to approve reclamation conducted other than by an approved plan. The phrase "as may be approved" clearly does not require Board approval.

The Division's interpretation of this exclusion requires Board approval, contrary to the language of the Act. R647-1-106 states: *"'Lands affected'... does not include: (x) lands which have been reclaimed in accordance with an approved plan* ***or as otherwise approved by the Board....*** *"* (emphasis added). By omitting the Legislature's words, "may be", the Division has imposed a requirement that exceeds the Legislative enactment. Thus, the Division has no regulatory authority over lands properly excluded from the Act and may not impose any requirements, including reclamation, variances, acreage limits, or sureties. As expressed in U.C.A. §40-8-4(7), this exclusion is mandatory.

3. The Act does not require reclamation beyond what is necessary to put lands in a stable, ecological condition compatible with probable future local land uses.

The Legislature's objective, expressed in U.C.A. §40-8-12(1), is to ensure that land be in *"a stable, ecological condition compatible with past, present and probable future local land uses"* (emphasis added). The term "probable" signifies something that is not certain but merely "likely". In law it often means "reasonable" and the two terms are interchangeable, e.g., "probable cause" and "reasonable cause." The term "future" connotes something prospective, not yet actual, an event expected but not certain to occur, in a time that may come soon, or after a long time from the present. To the contrary, the Division is requiring proof that the owners' stated use is not just expected but actual, not just probable but certain, and not just future, but immediate. To exact that level of proof clearly exceeds the scope of the Division's authority, it appears to be arbitrary and capricious, and its exercise abuses statutory discretion.

4. The variances required by the Division exceed the scope of its authority.

In its March 5, 2001 letter, the Division stated that "the variance requirements of Rule R647-3-110 are not satisfied." The Division thus conditioned reclamation approval on Mammoth Mining Company obtaining approval of a number of variances. For example, as part of the variance process for the Butterfly Gap Road, the Division required local approvals and clearances from the Juab County Planning and Zoning Commission, city councils and perhaps other agencies. However, as explained above, the existing reclamation conforms to Division standards, so a variance is not required. According to the preamble to R647-3-109, a variance is only required if the operator does not conform to reclamation practices *("During reclamation, the operator shall conform to the following practices* ***unless*** *the Division grants a variance in writing."* (emphasis added).) Further, nothing in the Act or Rules requires, or gives rule-making notice of any requirement that, an operator must provide "all state, county and local approvals and/or clearances, (e.g., Juab County Planning and Zoning Commission, city council, etc.)"

We believe that after the field inspection the Division will have sufficient information to determine that certain of the areas comprising Concern #1, including the Butterfly Gap Road, already are in a stable, ecological condition that is compatible with the Act's expectations. If that is so, then no additional reclamation is required under the Act and no variance would be required.

5. Condition of Land is Capable of Supporting Post-Mining Land Use.

Rule R647-3-109.5 authorizes an owner to "leave an on-site area in a condition which is capable of supporting the post-mining land use." The Division has provided no rule or other guidance, and there is no Utah caselaw that gives owners objective criteria establishing the threshold, or acceptable minimum, requirements for meeting the elements of "capability" and "supporting." The "rule of reasonableness" inherent in administrative interpretations of statutory language, requires that the Division not exceed the legislature's intent.

6. The Act is subject to constitutional protections of private property and the Utah Private Property Protection Act.

The Fifth Amendment to the United States Constitution, as well as §§7 and 22 of Article I of the Constitution of Utah state that "No person shall be ... deprived of ... property, without due process of law," "nor shall private property be taken for public use, without just compensation."

The "Utah Mined Land Reclamation Act," U.C.A. §§40-8-1 *et seq.* (the Act), applies to public as well as privately-owned lands, *see* U.C.A. §40-8-4(13) (definition of "owner"). However, the constitutional protections apply only to private property. The Act permits certain encroachments, to a limited and specifically defined extent, upon constitutionally protected private property. These encroachments are permitted only because and only when they advance a legitimate public purpose, or do not deprive the private owner of all viable economic use, or interfere with a reasonable expectation of a vested right, or adversely impact some other specially-recognized constitutional private property right. The Act is further qualified by and subject to the strictures of the Utah Private Property Protection Act. See U.C.A.§§63-90-1 *et seq.*

III. THE SEVEN AREAS

It is our understanding that all of the areas listed under Concern #1 are part of the Small Mining Operations Permit, S/023/00/041.

FIRST AREA: "5. Butterfly Gap Road (Exhibit ten)."

DOGM POSITION: Your letter stated: "it is unacceptable to the Division at this time that this road will be used for the Mammoth Town Development. The Division's position is that the requirements of a Rule R647-3-110 variance must be satisfied."

OWNERS' POSITION: This road provides access on privately owned properties. The area of disturbance measures only 0.90 acres, not 2.1 acres. The operator and primary owner is Mammoth Mining Company. Its reclamation plan is to turn the road over to the owners for their continuing use. The owners are using and will continue to use the road as an access-way. Continued access is critical

to the owners because the Road provides access for fire-fighting purposes and for use by area residents, including Mr. Hansen. Continued access is critical to Mammoth Mining Company and Keystone Surveys because the Road provides access to building sites and for showing and developing the properties for probable commercial and residential use in the future.

The Act regulates "on-site private ways [and] roads," U.C.A. §40-8-4(7). However, the fact of private ownership limits that regulation in two ways. First, such regulation is subject to the prohibition against governmental "takings" of private property in violation of the U.S. and Utah constitutions and also the Utah Private Property Protection Act, U.C.A. §63-90-1 *et seq.* Second, private uses often are very different from public uses. The Act clarifies that reclamation should be designed in the context of the subject land's *"surroundings,"* U.C.A. §40-8-2(2), and its *"subsequent use,"* U.C.A.§40-8-2(3), as well as *"be adapted to the diversity of... economic and social conditions in the area,"* U.C.A.§40-8-2(3). Clearly, private land, in private surroundings, that is intended for continuing private use, which involves private economic and social conditions, will require reclamation designed and adapted to those factors, not to public use factors.

The Division has claimed that the reclamation plan is inadequate (see Division Summary and Response, 9/21/00) because "the road was opened for drilling purposes and therefore needs to be reclaimed to Division standards to meet the requirements of R647-2-109." If that is true, then a standard of reclamation that meets the requirements of R647-2-109 will be adequate. Sub-paragraph 8 of R647-2-109 states the requirement that must be met:

> *"... When a road or pad is to be turned over to the property owner or managing agency for continuing use, the operator shall turn over the property with adequate surface drainage structures and in a condition suitable for continued use."* (emphasis added).

Mammoth Mining Company has met those requirements. First, it is turning over the Butterfly Gap Road to itself as primary property owner for its continuing use. Second, Mammoth Mining Company plans to turn over the road with adequate surface drainage structures, and in a condition suitable for continued use. This meets the "plain language" requirements of R647-2-109. Neither the Act nor Rules interpret what is meant by any of the following terms: "adequate," "condition," "suitable," "continuing," "continued," and "use," nor do they state any criteria to further guide operators in complying with subparagraph 8. We are not aware of any additional rulemaking by the Board that defines those terms. Further, the Rules do not require an operator who is turning over a road to its owner to document municipal clearances or otherwise obtain a variance. Therefore, contrary to the Division's claim, Mammoth Mining Company's reclamation already is adequate.

Division staff will be able to verify this during the pending field inspection. The Road has created a desirable effect on its surroundings. We believe the Road's present condition is both desirable and a cognizable real property improvement. It is a valuable asset, privately owned and used. It benefits the owners' use and will facilitate the upgrade of the surrounding environment. Reclamation is not necessary because the Road currently meets the Act's objectives.

SECOND AREA: ***"6. Mammoth Mine Area (Exhibit eleven)."***

DOGM POSITION: The Division's concerns center around a group of old mining buildings consisting of three residential houses, a mine office, and two storage buildings. In the March 5, 2001 letter, the Division stated that Centurion received a variance authorizing two houses, a garage, a mine dry room and a shop to remain after the mine was closed: "The approved variance ... was to allow for continued exploration and mine development. This variance was granted based on a specific post mining land use. The proposed post mining land use has changed; therefore, the conditions of the original variance no longer apply."

OWNERS' POSITION: Our estimate of the area of disturbance after 7/1/77 is 0.25 acres, not 4.725 acres, as stated in the March 5th letter.. Mammoth Mining Company's reclamation has been to restore and clean up the partially deteriorated buildings and convert them to non-mining uses. They have been partially restored. As for the non-mining uses, Mr. Hansen personally makes his residence in the old "McIntyre Mansion;" Keystone rents out "Grandma's House" and the "Mule Barn House" as residences; and the other buildings store furniture, technical materials, antiquated mine maps, or are vacant.

The Legislature expressed very clear limitations on the Board's authority: "All lands shall be excluded ... in which mining operations have ceased prior to July 1, 1977." U.C.A. §40-8-4(7). We believe this exclusion applies to the Mammoth Mine Area (Exhibit eleven). This area has been extensively disturbed by mining activities prior to 1913. See attached copy of the Tintic Mining District topographical map, published by the USGS in 1913.

It is unclear why the Division would require a variance to continue exploration and mine development as **post** mining land uses. More importantly, it is unclear why the Division would require a variance at all, given that the Rules indicate an operator requests a variance only if it wants to vary from reclamation practices. However, none of the reclamation practices specifically listed in R647-2-109; R647-3-109 and R647-3-111 prescribes the reclamation of buildings or facilities. Thus, there is nothing to vary from.

The only reference in the Rules to the terms "surface facilities" and "buildings" is in R647-4-110. That Rule states: *"... proposed reclamation includ[es] *** 3. ...surface facilities to be left as part of the postmining land use, including ... buildings"* (emphasis added). In other words, not only does Mammoth Mining Company's proposed reclamation not require a variance, but it plainly meets the Rules' reclamation provision for building and surface facilities.

In sum, the owners contend that the Division should review the merits of the proposed reclamation in light of R647-4-110, and approve leaving the buildings for postmining land uses, rather than focusing on the inappropriate denial of Centurion's variance.

THIRD AREA: ***"9. Road Above the Plummer Tunnel (exhibit fourteen)"***

DOGM POSITION: In Mr. Hedberg's March 5, 2001, letter, the Division stated that the plan to use this Road "for access to the water tanks for the Mammoth Town Development is unacceptable

at this time." The Division then implied that a variance was required, but that the elements have not been satisfied.

OWNERS' POSITION: Mr. Hansen has stated that continued use was critical to access water tanks that provide water for fire control purposes and residential use for the entire Mammoth mine site area. Keystone Surveys has indicated that continued use of this road is essential for access by its wholly-owned subsidiary, Mammoth Town Development Corporation, to the same water tanks, and for its probable future uses, which include property development.

We believe that these lands are excluded from the Act's jurisdiction pursuant to U.C.A. §40-8-4(7), for the reasons expressed above in Items 1 and 2 of Section II. However, even if not excluded, Mammoth Mining Company's proposed reclamation -- to leave the road for postmining uses and turn it over to the owners for their continued use -- fully complies with the Act and Rules, for the same reasons expressed in the discussion concerning the Butterfly Gap Road. Accordingly, the Division lacks grounds to require a variance.

FOURTH AREA: ***"10. Nad Breccia Road (exhibit nineteen)"***

DOGM POSITION: In the March 5, 2001 letter, the Division stated that the plan to use this Road "for the Mammoth Town Development is unacceptable at this time." The Division then implied that a variance was required, but that the elements have not been satisfied.

OWNERS' POSITION: Mr. Hansen has stated that this Road, like the Lower Mammoth Tunnel Road (see SIXTH AREA, below), has been in historical existence. All significant disturbances occurred prior to 7/1/77.This Road provides important access to portions of Mammoth Mining Company's privately owned property and constitutes a valuable asset. Like the Lower Mammoth Tunnel Road, it was repaired for modern use by a bulldozer during 1994 exactly along the original roadway. We have USGS aerial photographs, taken in 1969, that clearly show no additional significant disturbance was caused by the 1994 repairs.

Therefore, we believe that the Act requires that these lands be reclaimed to a condition that is compatible with past, present and probable future local land uses , for the reasons expressed above in Item 3 of Section II.

FIFTH AREA: ***"20. Nad Breccia Drill Pad (exhibit twenty-four)"***

DOGM POSITION: In the March 5, 2001 letter, the Division stated that the plan to keep the Pad "as essential to the post-mining purposes of the Mammoth Town Development is unacceptable at this time." The Division then implied that a variance was required, but that the elements have not been satisfied.

OWNERS' POSITION: SAME AS OWNERS' POSITION IN FOURTH AREA, ABOVE. Also, the owners agree with the Division's estimate of 0.15 acres. This pad provides a "turnaround" at the end of the Nad Breccia Road. Thus Mammoth Mining Company's reclamation plan, as operator, is to turn over the Pad to the owners, as required by R647-2-109.8 (the operator shall turn

over the road or pad with adequate surface drainage structures and in a condition suitable for continued use).

For the most part, the Pad presently is in a reclaimed condition. Hand tools may be needed to smooth out the area and native seeds can be provided. That reclaimed condition will fulfill the Act's objective, expressed in U.C.A. §40-8-12(1), to return the land to a stable, ecological condition compatible with past, present and probable future local land uses. Finally, the proposed reclamation clearly falls within the reclamation provided under R647-4-110 (proposed reclamation includes leaving surface facilities as part of the postmining land use).

SIXTH AREA: ***"23. Mammoth Lower Tunnel Road (exhibit twenty-seven)"***

DOGM POSITION: In the March 5, 2001 letter, the Division stated that this Road falls under the same category "as the other mining related disturbances" because "the area was used for mining and/or exploration purposes." The Division then stated that the plan to keep the Road to be "used and maintained for the Mammoth Town Development is unacceptable at this time." The Division then implied that a variance was required but that the elements have not been satisfied.

OWNERS' POSITION: SAME AS OWNERS' POSITION IN FOURTH AREA, ABOVE. Also, this Road is clearly shown as an improved road on the attached 1913 USGS topographical map of the Tintic Mining District.

SEVENTH AREA: ***"25. Mammoth Mine Storage Area (exhibit twenty-eight)"***

DOGM POSITION: In the March 5, 2001 letter, the Division stated that the plan to use the pad area "for the storage of mine-related artifacts pending construction of the Mammoth Town Museum, and for short and long-term storage of vintage lumber, antique mining equipment, and/or rock for construction of Mammoth Town is unacceptable at this time." The Division then implied that a variance was required, but that the elements have not been satisfied.

OWNERS' POSITION: Mr. Hansen has stated that this storage pad was constructed in 1995 for the purpose indicated by the Division above. We believe the Division's estimate of 0.391 acres is probably correct. Our primary disagreement is that this area, like the Mammoth Mine Area (see SECOND AREA, above), was significantly and extensively disturbed prior to 7/1/77, such that the mining activities after that date, on top of those surface disturbances, did not cause any appreciable or significant disturbance.

Thus, while earth-moving equipment was used, its use constructed a facility (the storage pad) that beneficially improved the prior disturbance. Therefore, this area is in a better condition, one that meets the reclamation objective of U.C.A. §40-8-12(1) (to return the land to a stable, ecological condition compatible with past, present and probable future local land uses), and falls within the reclamation provided for by R647-4-110 (proposed reclamation includes leaving surface facilities as part of the postmining land use).